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Bugs, TV Tape Thrown Out As Viet Spy Trial Evidence

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A federal judge ruled today that most of the electronic surveillance of two men charged with espionage cannot be used in their trial.

U.S. District Judge Albert V. Bryan Jr. ruled that most of the surveillance of David Truong and Ronald L. Humphrey was undertaken for purposes of criminal prosecution rather than for a simple intelligence investigation.

The judge said that since there was no warrant for the surveillance, most of it cannot be used in the criminal trial scheduled to begin May 1.

According to court records, the surveillance of Truong, a Vietnamese citizen living here, began on May 11, 1977, and ran for 268 days. The audio surveillance of Humphrey, then an employee of the U.S. Information Agency, also began in early May.

BUT BRYAN RULED TODAY that all surveillance after July 20, 1977, must be suppressed, since that was when the government decided to pursue prosecution of the two men.

Bryan's order also would forbid the use in court of most of the videotape surveillance of Humphrey in his USIA office, which began on June 20 and continued until Sept. 15.

Prosecutors, with the support of a sworn affidavit by Attorney General Griffin Bell, had argued that the decision was not made to prosecute Humphrey and Truong until January of this year, shortly before they were indicted on espionage charges.

But Bryan ruled today that "by July 20, 1977, the primary focus of the investigation was no longer foreign intelligence gathering, and therefore all evidence obtained from the telephone and microphone surveillance after July 20, 1977, as well as the fruits thereof, must be suppressed."

Under current court rulings, the president and attorney general are authorized to order warrantless surveillance in foreign intelligence investigations. But a warrant still is required for surveillance to be used in the criminal prosecutions.

IN DECIDING that the focus of the investigation shifted to criminal prosecution by July 20, Bryan said, he considered a letter written on that date by Bell to CIA director Stansfield Turner. That letter had been submitted to the judge for his private consideration.

In Bryan's opinion today, he said that "a fair characterization of the . . . letter would be that it shows the Justice Department trying to put together a criminal case."

Bryan also ruled that three letters sent by Truong by courier to Vietnamese officials in Paris, which were intercepted by federal agents, cannot be allowed as evidence in court.

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